IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Court's order whether the case is or not approved for reporting

(Chapter VIII, Rule 32(2) (b)

Description of Case

Criminal Appeal No.89 of 2003
Ramesh Bhandari
Vs
State

Date of decision :-21.04.2006

A.F.R. (Approved for Reporting)

~~Not approved for reporting~~

Date :- 21.04.2006 Initials of Judge

Note :- Bench Reader will attach this at the top of the first page of the judgment when it is put up before the Judge for signature.

HIGH COURT OF UTTARANCHAL AT NAINITAL
Criminal Appeal No.89 of 2003

Ramesh Bhandari S/o Bhim Nath Bhandari
R/o village Kama Patti
Kama Tehsil Ranikhet,
District Almora .....Appellant

Versus

State .....Respondent

Date:- 21st April, 2006

Sri R. B. Agarwal learned counsel for the appellant.
Sri K.S. Rautely and Sri G. S. Sandhu learned A.G.A.s for the State.

Hon'ble J. C. S. Rawat, J.

1. This is a criminal appeal against the judgment and order dated 20.01.2003 passed by Sri. V.K. Maheshwari, the then Addl. Sessions Judge, Nainital in S.T. No.165/1994, whereby the appellant was convicted and sentenced to undergo R.I. for a period of five years and to pay fine of Rs.3000/- under section 304 part-2 of the I.P.C. In default of payment of fine, the appellant to undergo R.I. for further three months.

2. Brief facts of the case are that on 31.12.1993 the complainant-Chandi Prasad Bhatt was carrying vegetables & eggs ect. In the vehicle(Tyota truck) bearing No.DL 1L-A-794 to Karanprayag. Chandra Ballabh Joshi was driving the said vehicle and the complainant alongwith his nephew Meharban Singh and the helper-Mahendra Singh was sitting in the said vehicle. When they were taking tea at 'Gethia' one vehicle bearing No.UP 01394 (counter truck) came there. Mahendra Singh was driving the said vehicle No.UP01-394 in which Chandan Pandey-owner of the vehicle, Ramesh Singh Bhandari and one helper were also sitting. They hurled the abuses to Chandra

Ballabh Joshi, who was the driver of vehicle No.DL1L-A-794. Thereafter, both the vehicle left 'Gethia' and went towards Bhawali. The appellant's vehicle obstructed the road at Bhumiadhar to stop the truck of the Chandra Ballabh Joshi. When the vehicle of the complainant reached at 'Bhumiyadhar', the vehicle of the accused compelled Chandra Ballabh Joshi to stop his truck there. When the truck of Chandra Ballabh Joshi was stopped, the appellant immediately started beating Chandra Ballabh Joshi with the tyre-rod. Due to this, Chandra Ballabh Joshi sustained the injuries at the spot. The injured was taken to Bhawali and in the meantime the brother of the injured Krishnanad Joshi came there and took his brother to Haldwani hospital in his truck. Chandi Prashad Bhatt, who was sitting in the truck alongwith the injured, went also Haldwani hospital alongwith the brother of the injured. The injured was admitted in the hospital where his injuries were examined by the doctor. Thereafter, the injured was referred to a higher institute for specialized treatment. The injured was taken to Bareilly hospital. Thereafter, on 02.01.1994 he was shifted to Gandhi Memorial & Associates Association Hospital, Lucknow, where he died on 03.01.1994. Chandi Prasad Bhatt had lodged the FIR in the police station on 01.01.1994. Thereafter, the police investigated the matter and submitted the chargesheet before the court under section 302 IPC.

3) The appellant was charged under sections 302 IPC by the trial court. The appellant denied the charge and claimed the trial.

4) In order to prove its case, the prosecution has examined ten witnesses. Chandi Prasad Bhat (PW1) was the informant. He was also present at the spot and he proved the factum of incident. Dr. H.C. Joshi (PW2) was the medical officer at Haldwani Hospital and he conducted the medical officer at Haldwani Hospital and he conducted the medical examination of the injured(deceased) on 01.01.1994. The following injuries were found on the person of injured (deceased):-

(i) Incised wound illiptical 1cm x 2 cm bare exposed on right side forehead. Situated 2cm above eyebrow, oblique with fresh bleeding.
(ii) Oblique chop wound on middle of forehead situated 2cm above root. Nose illiptical with fresh with fresh bleeding expasing bone 2cm x .3cm with surrounding red contusion.
(iii) Oblique chop wound 3cnm x 1cm on left forehead, situated 3.5cm above eyebrow with fresh bleeding expasing. Fractured frontal above margin clear illiptical in shape. No tail.
(iv) Incised wound 2cm x .3cm x scalp deep on sub occipitial region with scalty fresh bleeding.
(v) Incised wound 2cm x 0.3cm ellipticial skin deep with scalty. Fresh bleeding.
(vi) Incised wound 1cm x .2cm elepticial left side upper lip with blood clot sacft.
(vii) Incised wound elipticial horizontal 8cm x 1 cm on left side skin with scoft clot expasing medible.

5) The doctor has opined that the duration of the injuries was 6-7 hours old. The injuries sustained by the injuries were grievous in nature. The doctor has proved the medical report Ex.ka.2. The doctor has opined that the said injuries might be sustained by the injured on 31.12.1993 at about 9:30pm. It was further opined that the injuries were caused by the sharp edged weapon. He has further opined that the injuries

sustained by the injured could be caused by the tyre-rod.

6) The prosecution has also adduced the evidence of Mahesh Chandra (PW3), but he has not supported the prosecution case. Mahendra Singh Rawat (PW4) was the driver of the vehicle in which the appellant was sitting. He had stated that he knew the injured before the incident. He had stated only that the deceased had sustained the injuries on the date of occurrence, but PW4 has denied that the accused assaulted the deceased on the date of occurrence. He was declared hostile by the prosecution. The prosecution has also adduced the evidence of Krishnanand Joshi (PW5), who was the brother of the deceased. He took the deceased from Bhowali to Haldwani for medical treatment. He was not the eye-witness of the incident. Harish Lohani (PW6) and Meharban Singh (PW7) have not supported the prosecution version and they were declared hostile by the prosecution. Prof. I.D. Sharma (PW8) was the incharge of the Medical College, Lucknow. He had stated that the injured sustained the injuries on the head. He had further stated that there was a fracture on the forehead of the injured. CT-scan was also conducted and it was revealed that the injury was very serious and it could not be cured even by the neurosurgery. He had stated that on 02.01.1994 the injured was feeling difficulty in taking the breath and ultimately he died on 03.01.1994. The medical evidence also shows that the deceased died due to injuries sustained by the injured on the date of incident. The prosecution has also adduced the evidence of Budhi Ballabh Gurrani (PW9), who initially investigated the matter. He proved the site plan

Ex.ka.7. S.I.-D.K. Sharma (PW10) conducted the further part of the investigation and submitted the chargesheet Ex.ka.9 against the appellant.

7) The statement of the accused-appellant was recorded under section 313 Cr.P.C. The appellant has denied the allegations and stated that he has been falsely implicated in this case. However, no defence evidence was adduced before the court below.

8) On consideration of the entire evidence on record the learned trial court has held that the circumstances shows that the appellant has no intention to kill the deceased. The trial court acquitted the appellant from the charge under section 302 IPC and convicted him under section 304 Part-2 IPC and sentenced him as mentioned above.

9) Feeling aggrieved by the judgment and order of the trial court, the appellant has come up before this Court.

10) It needs to be mentioned here that it is not disputed that the deceased met a homicidal death on account of injuries sustained by him on the date of occurrence. The prosecution has adduced the evidence of Dr. H.C. Joshi (PW2), who conducted the medical of the deceased on 01.01.1994. The doctor has opined that the duration of the injuries was 6-7 hours old. The doctor has proved the medical report Ex.ka.2. The doctor has opined that the said injuries might be sustained by the deceased on 31.12.1993 at about 9:30pm.

11) Now, I have to examine as to whether the appellant was responsible for causing the injuries to the deceased or not. In order to prove its case, the prosecution has adduced the evidence of Chandi Prasad Bhatt (PW1), was lodged the FIR. He was traveling in the vehicle, which was being driven by the deceased on that date of occurrence. He saw the entire incident and narrated as has been mentioned in para 2 of this judgment. The prosecution has adduced the evidence of Mahesh Chandra (PW3), Mahendra Singh Rawat (PW4), Harish Lohani (PW6) and Meharban Singh (PW7), but they have not supported the prosecution and they stated that they had not seen the appellant to give the rod blows on the person of the deceased. However, Mahendra Singh Rawat (PW4) has only supported the factum of incident as the spot, but he had not seen who caused the injuries on the person of the deceased.

12) Learned counsel for the appellant contended that the evidence of Chandi Prasad Bhatt PW1 cannot be relied upon because there was no sufficient light at the spot and as such this witness could not recognize the assailant at the spot. Learned counsel for the appellant had further contended that PW1 Chandi Prasad Bhat had himself had stated that there was a dark night on the date of incident. It was further contended that if there was a no light at the spot, it was not possible for the witnesses to identity the assailant at the spot. Learned AGA refuted the contention. PW1 had clearly stated in his evidence that when the deceased and other persons sitting on the vehicle were taking tea at village Gethia, the appellant alongwith other person sitting in his truck came to the deceased and PW1, and

met them and hurled abuses to the deceased in presence of PW1 Chandi Prasad Bhat. As such, the witness had sufficient opportunity to remember the face, feature and voice of the appellant as he had abused the deceased. This is not a case where the identifying witness had only a fleeting glimpses of the appellant. The appellant hurled abuses upon the deceased and as such there was a scuffle between them and the people present including PW1 Chandi Prasad Bhat pacified their scuffle. The witness had sufficient opportunity at that time to recognize the accused. If the appellant was seen by the witness immediately before the incident, the appellant could be recognized by his voice itself even in a dim light or even in a dark night. Secondly, PW1 Chandi Prasad Bhat had himself stated in his evidence that there was one small truck stationed at the spot and its light was on and it was giving some light at the spot. The source of light has been indicated in the evidence of Chandi Prasad Bhat PW1. The said witness had not been further cross-examined that there was no source of light from the said truck stationed at the spot. Thus, the evidence of PW1 credible and cogent. As such, I do not find merit in the contention of the learned counsel for the appellant.

13) Learned counsel for the appellant has assailed the evidence of PW1 on the ground that he had stated in his evidence that the injuries were caused by the tyre-rod. But, there were only incised wounds on the person of the deceased. It was contended that the incised wound could be caused by the tyre-rod. It was further pointed out that the tyre-rod could cause the lacerated wound. It is pertinent to mention here that

Dr. H.C. Joshi (PW2) was the medical officer, who proved the medical report Ex.ka.2. The doctor has opined that the injuries were caused by the sharp edged weapon and it can be caused by the tyre-rod. The evidence of the doctor is unrebutted because there was no cross examination on this point. Apart this, the tyre-rod is generally blunt on the back side and there is a sharp edged at the top of the rod. Ex.ka.2 also reveals that the injured had also sustained the injuries on such area of the body where the **tense structures** coming the bones exists. The Modi's Medical jurisprudence & Toxicology (22nd Edition) provides as under:-

> ***"Incised looking wound:-*** *Occasionally, on wounds produced by a blunt weapon or by a fall, the skin splits and may look like incised wounds when inflicted on tense structures covering the bones, such as the scalp, eyebrow, iliac crest, skin, perineum etc., or by a fall on the knee or elbow when the limb is flexed. But the edges of such wounds will be found irregular with a creation amount of bruising, and small strands of tissues may be seen at the bottom bridging across the margins, if examined with a hand lens. In the case of wounds of the scalp, the hair bulbs will be found crushed, if they are inflicted with a blunt weapon, but will be found cut and forced into the wound, if produced by a cutting weapon like a heavy edged axe or a chopper."*

14) It has been held in **Darshan Singh Vs. State of UP reported in AIR 2004 SC p/4488:-**

> *"22. ..... However, there is one aspect which remained unexplained even at the trial i.e., the incised wounds-one each on Ranjit Singh and Hari Lal which, according to the medical evidence, could have been caused by a sharp-edged weapon. As far as Ranjit Singh is concerned, the question of explaining the injury caused to him does not arise as he was acquitted for the reason that his presence was doubted. In fact Ranjit Singh himself in the course of section 313 examination denied the knowledge of the incident. There remains the incised injury caused to Hari Lal which at first blush seems unexplained. PW6 noted incised wound of 5cm x 1cm x scalp deep on the occipital region, with the exposure of skull bone. PW1 and his brother were supposed to have wielded bamboo sticks. If we go strictly by medical evidence, this injury might have been caused by a sharp-edged weapon but not a lath. But, we get it from the text books on Medical Jurisprudence that some of the lacerations caused by a blunt instrument could look like incised wounds if the blunt force is applied on the areas such as scalp. The following passages from Medical Jurisprudence and Toxicology (Seventh Edition) authored by HWV Cox and edited by Dr. P.C. Dikshit wound clarify the position:*

"The most common place for serious lacerations to be found, especially in forensic practice, is the scalp which is often the target for homicidal attack. As mentioned above, the hard underlying skull forms and unyielding base upon which the skin and soft tissues can be crushed, so that many blunt injuries of the scalp are indistinguishable at first sight from a laceration caused by a knife, sharp axe or any other cutting instrument."

Under the head Split Laceration, it is explained:-

"Splitting occurs by crushing the skin between two hard objects. They are also called incised looking wounds. When there is application of blunt force on areas where the skin is closely applied to the bone and sub-cutaneous tissue is scanty, the wounds are produced by linear splitting of the skin. The common areas are scalp, eyebrows and hibones. They can be differentiated by examined the margins by magnifying glass and in these cases the roots of hair are crushed.

Again, at the beginning of the Chapter V dealing with the wounds of the head, it is explained:-

"Blunt injuries to the scalp are classically confused with knife slashes, due to splitting of the tissues because of the firm underlying cranial bones beneath the aponeurosis. This has been described in the last chapter, but is should be repeated that the distinction between blunt splits and knife cuts may be

difficult, but usually possible by a minute examination of the wound margins."

In view of the above, I do not find any substance in the contention advanced by the defence.

15) Learned counsel for the appellant contended that there is delay in lodging the FIR. If the FIR has been lodged by undue delay, it should have been properly explained at the time of lodging the FIR. The delay in lodging the FIR shows that it was the outcome of due consultation or deliberation. Learned AGA refuted the contention. Kishnanand Joshi (PW5) had stated in his evidence that he was going towards Haldwani from Dwarahat in the night when the incident took place. When he reached at 'Garampani' he was informed about the incident and then he immediately rushed towards Bhowali where he found his brother in a precarious condition and the appellant. He further stated that he had not lodged the report at Bhowali police station because the matter did not pertain to that police station. He further stated that the appellant was handed over to Jyolikoat police outpost and the injured was taken to Haldwani hospital. In view of the precarious condition of the injured, the complainant as well as his brother Krishan Aanand Joshi PW5 and other must have concentrated more in looking after the injured that in lodging the report. They would have concentrated to save the life of the injured. The FIR was lodged on the next day. Perusal of the medical report and the evidence of doctor revealed that the condition of the injured was very precarious and he was referred for the higher centre for medical treatment.

The injuries were found on the forehead of the deceased and the same could not be cured even by the neurosurgery. Apart from it, PW5 Krishnanand and injured are the drivers of the truck. None of them is well conversant with the technicalities and formalities of law. It is not in the evidence that the deceased and the appellant had any long standing enmity. It is in the evidence that a scuffle took place at Ghethia in between the appellant and the injured. Thereafter, both went towards Bhowali in their trucks. It was pointed out that the distance between Gethia and Bhumiadhar would be about 5km. There is no evidence that PW1 Chandi Prasad Bhat, who had lodged the repot, had not enmity with the appellant. There is no reason why a witness, who has no enmity with the appellant, will falsely implicate the appellant instead of real culprit. Nobody would like to escort free the real culprit and would falsely implicate an innocent person. It has been held by the Apex Court in **Harbans Kaur Vs. State of Haryana 2005 (9) SCC p/195:-**

> *"There is no proposition in law that relatives are to be treated as untruthful witnesses. On the contrary, reason has to be shown when a plead of partiality is raised to show that the witnesses had reason to shield the actual culprit and falsely implicate the accused. no evidence has been led in this regard. So far as the delay in lodging the FIR is concerned, the witnesses have clearly stated that after seeing the deceased in an injured condition, immediate effort was to get him hospitalized and get him treated. There cannot be any generalization that whenever there is a delay in lodging the FIR, the prosecution case becomes suspect. Whether delay is so long as to throw a*

cloud of suspicion in the seeds of the prosecution case, would depend upon the facts of each case. Even a long delay can be condoned if the witnesses have no motive of implicating the accused and have given a plausible reason as to why the report was lodged belatedly. In the instant case, this has been done. It is to be noted that though there was cross examination at length, no infirmity was noticed in their evidence. Therefore, the trial court and the High Court were right in relying on the evidence of the prosecution witnesses."

16. It has been held by the Apex Court in **Ashok Kumar Pandey Vs. State of Delhi 2002 SCC (Cri) p/728 & 2002 (4) SCC p/76:-**

"8. It has been submitted on behalf of the appellant that there was inordinate delay in lodging the first information report, as the occurrence is said to have been taken place on 2130 hours on 11.19.1996, the formal first information report was registered on 12.09.1996 at 0120 hours, inasmuch as no steps were taken by the informant for lodging the FIR before the police arrived at the hospital. In our view, at the time PW2 and DW1, on hulla, came to the room of the victim and after the appellant fled away with bloodstained dagger in his hand, seeing the condition of the injured, they immediately rushed them to the hospital hoping against hope that they may survive, where the doctor declared them brought dead. It is natural conduct of a normal human being to

rush with injured persons to the hospital more so when they are so near and dear ones like daughter and granddaughter instead of leaving them at the place of occurrence. Therefore, no adverse inference can be drawn against the prosecution as the informant did not go to the police station to lodge the FIR rather rushed to the hospital with the deceased persons to save their lives. Further, it cannot be said that there was any delay at all in lodging the FIR, much less an inordinate one, as the incident is said to have taken place on 11.09.1996 at 2130 hours, fardbeyan was recorded in the hospital at 0045 hours on the same night and dispatched to the police station through special messenger where formal FIR was drawn at 0120 hours on the fateful night itself."

17) It is a well settled position of law that if the facts and circumstances show the explanation for delay in lodging the FIR, the delay can be condoned. The explanation submitted by the prosecution is sufficient to explain the delay in lodging the FIR. As such, I do not find in the contention of the learned counsel for the appellant.

18) Learned counsel for the appellant further contended that the prosecution has not tried to recover the weapon used in the incident. In absence of recovery of the weapon used in the incident, the entire prosecution story is doubtful. Learned Addl. G.A. refuted the contention, It is well settled position of law

that the testimony of the witnesses if found credible and cogent the defect on the part of the Investigating Officer cannot be taken into account. This is a remissness on the part of the Investigating Officer, which does not help the appellant. Even if the investigation is defective, that pales into insignificance when ocular testimony is found credible and cogent. In the case of a defective investigation the court has to be circumspect in evaluating the evidence. But it would not be right in acquitting an accused person solely on account of the defect. To do so would tantamount to playing into the hands of the investigating officer if the investigation designedly defective. **{See Dhanaj Singh @ Shera and others Vs. State of Punjab 2004 (3) SCC P-654, Chhotu Vs. State of Maharashtra 1997 CRI.L.J. 4394 (SC) and Karnel Singh Vs. State of M.P. 1995 CRL.L.J. 4173}.** The ocular testimony of the witnesses are credible and cogent. In view of the forgoing discussion I am of the view that if the Investigating Officer has not taken the weapon into his possession is of no avail to the defence and the contentions of the learned counsel for the the appellant has no force.

19) The learned counsel for the appellant further contended that there are certain discrepancies in between the evidence of PW1 and PW5. Learned Addl. G.A. refuted the contention. It is pertinent to mention here that the PW5 was not the eye-witness of the incident and he reached at the spot later on. As such, the contradictions whatsoever in the statement of PW5 cannot be taken in account. A person cannot accurately recall a conversation and reproduce the very words used by him or heard by him. He can only recall the

main purport of the conversation. It is unrealistic to expect a witness to be a human tape-recorder. The witness cannot be expected to pose a photographic memory and to recall the details of an incident. If the contradictions are there it does not affect the prosecution story, the courts should not take into account such minor discrepancies, which are bound to come on the truthful testimonies. The discrepancies as pointed out by the learned counsel for the appellant are not of any consequences. The Court is within its jurisdiction being the first appellate court to reappraise the evidence, but the discrepancies found in the ocular account of two witnesses unless they are so vital, cannot affect the credibility of the evidence of the witnesses. There are bound to be some discrepancies between the narrations of different witnesses when they speak on details, and unless the contradictions are of a material dimension, the same should not be used to jettison the evidence in its entirety. Incidentally, corroboration of evidence with mathematical niceties cannot be expected in criminal cases. Minor embellishment, there may be, but variations by reason therefor should not render the evidence of eyewitnesses unbelievable. Trivial discrepancies ought not to obliterate an otherwise acceptable evidence. **{See Leela Ram Vs. State of Haryana 2000 SCC (Cri) p/222}.** The discrepancies pointed out by the defence are minor and it did not charge the genesis of the prosecution story. As such, there is no force in the contention advanced by the leaned counsel for the appellant.

20) Perusal of the record reveals that the defence has not put even a suggestion that there was an enmity in

between the deceased and the appellant. There is no reason why a witness, who has no enmity with the appellant, will falsely implicate the appellant instead of real culprit. There is no reason to disbelieve the testimony of PW1. In the circumstances of the case, I do not find any reason to disbelieve the testimony of PW1. The court has to remove chaff from the grain. It has to disperse the suspicious cloud and dust out the smear of dust as all these things clog the very truth. So long chaff, cloud and dust remain, the criminals are clothed with this protective layer to receive the benefit of doubt. So it is a solemn duty of the courts, not to merely conclude and leave the case the moment suspicious are created. It is the onerous duty of the court, within permissible limit to find out the truth. It means, on one hand no innocent man should be punished but on the other hand to see no person committing an offence should get scot-free. The said witnesses were cross examined at length but noting could be elicited from their evidence.

21) The learned counsel for the appellant contended that Mahesh Chandra PW3, Mahendra Singh Rawat PW4, Harish Lohani PW6 and Meharban Singh PW7 had been declared hostile by the prosecution, but the conviction has been based only on the sole statement of PW1 Chandi Prasad Bhat. The evidence of PW1 Chandi Prasad Bhat was consistent. Nothing could be elicited from his cross examination to disbelieve his testimony. It is not always necessary to multiply the evidence of the incident on the same point. It has to be seen what is the quality of the witnesses. It is the quality of the evidence and not the quantity, which is required. It is the evidence available on record is

otherwise satisfactorily in nature and can be said to be trustworthy and increase in the number of witnesses cannot be turned up as the requirement of the case. The evidence of Chandi Prasad Bhat PW1, who was present at the spot, cannot be thrown outrightly on the ground that some of the witnesses of the incident had been declared hostile. The witness had no enmity with the appellant. There was no occasion to implicate the appellant falsely. If the witnesses are trustworthy then it is not required that there should be a multiplicity of evidence.

22) In view of the above discussion I am of the view that the prosecution has established the guilt beyond reasonable doubt against the appellant. The evidence of the prosecution further stand corroborated by the evidence of PW4 Mahendra Singh Rawat, who had stated in his evidence that he was helper in truck bearing No.DL 1L-A-794No. 079 and he knew the deceased. He had also stated that on 31.12.1993 at about 9:30pm the deceased was assaulted and the deceased had sustained the injuries. But, PW4 had refused to recognize the appellant at the spot. He further stated that the appellant not caused the injuries. This witness was declared hostile by the prosecution because he did not name the appellant as the assailant. It is well settled that the evidence of the hostile witnesses can also be relied to the extent it supports the prosecution version. Evidence of such witnesses cannot be treated to be washed of the record. It remains admissible in the trial and there is no legal bar to base the conviction on their testimony. The very object of taking evidence is to discover the truth as far as it is humanly possible for the court to do

so. The fact, therefore, that sound public policy requires that a party should not be permitted to malign his own witness, cannot and does not absolve the Court of its own high duty of attempting to discover the truth. Even when a witness deposes in favour of the case of the party calling him, the Court on a consideration of his evidence may either believe or disbelieve him. Even in such a case, the Court has power and duty of deciding whether or not to believe the witnesses. PW4 Mahendra Singh Rawat had supported the prosecution to the extent that the injured sustained the injuries at the spot. The defence has not made any cross examination to this witness. Thus, this statement further corroborates the testimony of Chandi Prasad Bhat PW1 that the injured had sustained injuries at the spot.

23) The prosecution evidence further stand corroborated by the medical evidence. The prosecution had adduced the evidence of Dr. H.C. Joshi (PW2), who was the medical officer at Haldwani Hospital. He conducted the medical examination of the deceased on 01.01.1994. The doctor has opined that the duration of the injuries was 6-7 hours old. The injuries sustained by the injuries were grievous in nature. The doctor has proved the medical report Ex.ka.2. The doctor has opined that the said injuries might be sustained by the injured on 31.12.1993 at about 9:30pm. It was further opined that the injuries were caused by the sharp edged weapon. He has further opined that the injuries sustained by the injured could be caused by the tyre-rod. Therefore, I find that the learned trial court has rightly convicted and sentenced the appellant and there is no infirmity in the judgment passed by the trial

court. Hence, the appeal is dismissed and the conviction and sentence awarded by the Trial court against the appellant is confirmed.

24) Let the lower court record be sent back to the court concerned for compliance. Compliance report be submitted within four months.

(J.C.S. Rawat, J.)

Dated 21.04.2006
LSR